

RESOLUTION AUTHORIZING THE CITY MANAGER AND HIS OR HER DELEGES TO EXECUTE
ENROACHMENT AGREEMENTS WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION OR
RAILROAD COMPANIES ON BEHALF OF THE CITY OF DURHAM

WHEREAS, the City of Durham ("City") is required to enter into encroachment agreements to maintain, repair or construct City infrastructure in, near or through property, including right of way, owned or controlled by the North Carolina Department of Transportation ("NCDOT") or railroad companies ; and

WHEREAS, these encroachment agreements typically involve the same or similar terms and conditions, and

WHEREAS, the Durham City Council ("Council") has on two previous occasions (Resolution #1984, passed in 1975; and Resolution #2362, passed on February 20, 1978 (collectively referred to as the "Resolutions")) delegated the authority to the Manager to sign these encroachment agreements; and

WHEREAS, a review of the Resolutions by staff indicates that the Resolutions are conflicting, out of date, and do not encompass the full scope of encroachment agreements that are necessary for the completion of City approved infrastructure projects; and

WHEREAS, it is determined by the City Council of the City of Durham that the public interest will be served with increased efficiency and the more timely completion of City approved projects if the City Manager and his or her delegates are authorized to execute encroachment agreements with NCDOT and railroad companies; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

Section 1. The City Manager and his or her delegates are authorized to execute the following types of agreements that are required by NCDOT or railroad companies as a condition of maintenance, repair, or construction of equipment, improvements, or infrastructure by City personnel or by the City's contractors ("City Performed Work"); or maintenance, repair, or construction of equipment, improvements, or infrastructure by developers with the expectation of future acceptance by the City ("Developer Performed Work") in, near, or through property, including right of way, owned or controlled by NCDOT or a railroad company on behalf of the City of Durham:

- Underground or Aerial Wireline Occupancy Agreements
- Pipe or Wire Occupancy Agreements
- Three Party Right Of Way Encroachment Agreements
- Right of Way Encroachment Agreements

Collectively, City Performed Work and Developer Performed Work are referred to as Work.

Section 2. An illustrative list of the type of Work that may require execution of the agreements authorized by this resolution follows:

- streetlights
- bus shelters
- curb ramps and wheelchair ramps

- curbs, gutters and concrete islands
- roadway or pedestrian betterments
- bike ramps
- other transit related installations
- sidewalk installations or modifications
- signage installations or modifications
- pavement marking modifications
- on-street parking modifications
- traffic signal installations and modifications
- driveway connections
- water, sewer, or stormwater pipes and associated appurtenances
- communication and electrical network cables, equipment, and conduits
- public utility connections, equipment, and conduits

Section 3. The City Performed Work requiring an agreement authorized by this resolution must be a City project, or part of a City project, for which funding has been appropriated and the project has been approved by City Council or by a duly authorized City administrator, and shall be undertaken in accordance with all applicable City policies and procedures. The Developer Performed Work requiring an agreement authorized by this resolution must be part of a project or agreement that has been approved by City Council or by a duly authorized City administrator with the expectation that after a developer has successfully constructed the Developer Performed Work to all applicable City standards and requirements, the Developer Performed Work will be accepted by the City for maintenance.

Section 4. The agreements may include conditions or terms related to construction, maintenance, and safety. The agreements will only be executed if these conditions and terms are determined to be consistent with sound engineering practice as determined by the City's Public Works, Water Management, or Transportation Departments.

Section 5. Conditions or terms, which relate to bond requirements of the City's contractors, may include those limits and requirements which are within the amounts established in the contract between the City and its contractor.

Section 6. Agreements must be reviewed by the City Attorney's Office before being executed if they contain provisions regarding the assignment of liability or indemnification.

Section 7. The City Manager may appoint only City employees as the City Manager's delegees under this resolution. All such appointments must be made in writing by the City Manager and must specify the type and limits of the delegee's authority. The instruments containing appointments are to be maintained as required by the records retention schedule.

Section 8. The City Manager shall bring before City Council any proposed agreement that varies from the provisions authorized herein, and shall also bring before City Council any agreement which he believes warrants City Council review or action.

Section 9. The following resolutions are repealed: Resolution #1984 and Resolution #2362.

Section 10. This resolution shall be effective upon passage.